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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

INFINITY CAPITAL MANAGEMENT, INC.
dba INFINITY HEALTH CONNECTIONS,
Debtor.

Case No. 21-14486-abl
Chapter 7

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Plaintiff,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Defendant,

Adv. No. 21-01167-abl

**AMENDED ANSWER
AND COUNTERCLAIM**

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Claimant,

v.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP; ROBERT E. ATKINSON,
CHAPTER 7 TRUSTEE,

Counter-Defendants.

ROBERT E. ATKINSON, CHAPTER 7 TRUSTEE,

Counter-Claimant,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

1 Counter-Defendant ROBERT E. ATKINSON, CHAPTER 7 TRUSTEE ("Trustee"),
2 by and through counsel, hereby answers the claims asserted by Counter-Claimant
3 TECUMSEH-INFINITY MEDICAL RECEIVABLES FUND, LP ("Tecumseh") in its
4 counterclaim (the "Tecumseh Counterclaim"), as follows:
5

6 **GENERAL ALLEGATIONS**

7 1. The Trustee is without sufficient information or knowledge to either admit or
8 deny the allegation set forth therein, and denies on that basis.

9 2. The Trustee is without sufficient information or knowledge to either admit or
10 deny the allegation set forth therein, and denies on that basis.

11 3. The Trustee is without sufficient information or knowledge to either admit or
12 deny the allegation set forth therein, and denies on that basis.

13 4. The Trustee is without sufficient information or knowledge to either admit or
14 deny the allegation set forth therein, and denies on that basis.

15 5. The Trustee is without sufficient information or knowledge to either admit or
16 deny the allegation set forth therein, and denies on that basis.

17 6. The Trustee is without sufficient information or knowledge to either admit or
18 deny the allegation set forth therein, and denies on that basis.

19 7. The Trustee is without sufficient information or knowledge to either admit or
20 deny the allegation set forth therein, and denies on that basis.

21 8. Deny.

22 9. Deny.

23 10. The Trustee is without sufficient information or knowledge to either admit or
24 deny the allegation set forth therein, and denies on that basis.

25 11. The Trustee is without sufficient information or knowledge to either admit or
26 deny the allegation set forth therein, and denies on that basis.

27 12. The Trustee is without sufficient information or knowledge to either admit or
28 deny the allegation set forth therein, and denies on that basis.

13. The Trustee is without sufficient information or knowledge to either admit or
deny the allegation set forth therein, and denies on that basis.

14. Deny.

FIRST CLAIM FOR RELIEF

15. The Trustee incorporates and repeats his responses to paragraphs 1 through 14 above as though set forth fully herein.

16. The Trustee is without sufficient information or knowledge to either admit or deny the allegation set forth therein, and denies on that basis.

17. The Trustee is without sufficient information or knowledge to either admit or deny the allegation set forth therein, and denies on that basis.

18. The Trustee is without sufficient information or knowledge to either admit or deny the allegation set forth therein, and denies on that basis.

19. The Trustee is without sufficient information or knowledge to either admit or deny the allegation set forth therein, and denies on that basis.

20. Deny.

21. Deny.

22. Counter-Claimant's counterclaim speaks for itself. To any extent this allegation seeks a legal conclusion, the Trustee denies.

23. Plaintiff's complaint speaks for itself.

24. Plaintiff's complaint speaks for itself.

25. Admit that there is a dispute; deny that the Trustee is in doubt.

26. Admit.

The Trustee denies that Tecumseh is entitled to any relief relating to the disputed receivables at issue, and expressly denies each and every assertion in the 'wherefore' clause found below Paragraph 26 of the Tecumseh Counterclaim.

SECOND CLAIM FOR RELIEF

27. The Trustee incorporates and repeats his responses to paragraphs 1 through 26 above as though set forth fully herein.

28. This response is a legal argument, and requires no response. To any extent a response is required, the Trustee denies.

29. The Trustee is without sufficient information or knowledge to either admit or deny the allegation set forth therein and, as such, denies those allegations.

30. Deny.

31. The Bankruptcy Code speaks for itself.

1 32. This response is a legal argument, and requires no response. To any extent a
2 response is required, the Trustee denies.

3 33. This response is a legal argument, and requires no response. To any extent a
4 response is required, the Trustee denies.

5 34. This response is a legal argument, and requires no response. To any extent a
6 response is required, the Trustee denies.

7 35. This response is a legal argument, and requires no response. To any extent a
8 response is required, the Trustee denies.

9 36. Deny.

10 37. Deny.

11 38. Plaintiff's complaint speaks for itself.

12 39. Deny as to the word "improper"; otherwise, Plaintiff's complaint speaks for
13 itself.

14 40. Admit that there is a dispute; deny that the Trustee is in doubt.

15 41. Admit.

16 The Trustee denies that Tecumseh is entitled to any relief relating to the disputed
17 receivables at issue, and expressly denies each and every assertion in the 'wherefore' clause
18 found below Paragraph 41 of the Tecumseh Counterclaim.

19 **THIRD CLAIM FOR RELIEF**

20 42. The Trustee incorporates and repeats his responses to paragraphs 1 through 41
21 above as though set forth fully herein.

22 43. Deny.

23 44. This response is a legal argument, and requires no response. To any extent a
24 response is required, the Trustee denies.

25 45. Admit.

26 46. This response is a legal argument, and requires no response.

27 47. This response is a legal argument, and requires no response. To any extent a
28 response is required, the Trustee denies

 48. This response is a legal argument, and requires no response. To any extent a
response is required, the Trustee denies.

 49. Deny.

1 50. Admit.

2 51. Admit that there is a dispute; deny that the Trustee is in doubt.

3 52. Admit.

4 The Trustee denies that Tecumseh is entitled to any relief relating to the disputed
5 receivables at issue, and expressly denies each and every assertion in the ‘wherefore’ clause
6 found below Paragraph 52 of the Tecumseh Counterclaim.

7 **AFFIRMATIVE DEFENSES**

8 A. The first cause of action of the Tecumseh Counterclaim fails to state a claim
9 for relief because it improperly, incompletely, or incorrectly pled the cause of action.

10 B. The second cause of action of the Tecumseh Counterclaim fails to state a
11 claim for relief because it improperly, incompletely, or incorrectly pled the cause of action.

12 C. The third cause of action of the Tecumseh Counterclaim fails to state a claim
13 for relief because it improperly, incompletely, or incorrectly pled the cause of action.

14 D. The second and third causes of action of the Tecumseh Counterclaim fails to
15 state a claim because there was no mutual agreement between Debtor and Tecumseh to form
16 a trust relationship, and therefore a resultant trust could not have formed under applicable
law.

17 E. All causes of action of the Tecumseh Counterclaim fails to state a claim
18 because Tecumseh cannot meet applicable evidentiary standards to prove their causes of
19 action, *e.g.*, clear and convincing evidence.

20 F. One or more of Tecumseh’s causes of actions fails to state a claim because
21 some or all of the disputed receivables were not actually or properly transferred to Tecumseh,
22 and were still owned by Debtor on the Petition Date.

23 G. Tecumseh’s claims are barred by Tecumseh’s own negligence and/or failure
24 to exercise for its own protection the proper care and precautions which prudent persons
under the same and similar circumstances would have exercised.

25 H. Tecumseh’s claims are barred by Tecumseh’s own unclean hands, including
26 but not limited to failure to perfect their interest, lack of due diligence, and/or failure to
27 accept the assignment/sale when proffered by Debtor.

28 I. Tecumseh’s claims are barred because of Tecumseh’s conduct (including
omissions or failure to act) constitutes a waiver, including but not limited to failure to perfect

1 their interest, lack of due diligence, and/or failure to accept the assignment/sale when
2 proffered by Debtor.

3 J. Tecumseh's damages are zero because all of the allegedly transferred
4 receivables were fully secured by HASelect's perfected security interest.

5 K. One or more of Tecumseh's causes of actions fails to state a claim because the
6 Sub-Advisor Agreement is not the operative contract relating to the transfer of assets.
7 Instead, the operative contracts were one or more contracts styled as "Assignment and Bill of
8 Sale", each of which was governed by Nevada law, and some or all of which were
improperly executed in a manner that failed to actually convey title.

9 L. One or more of Tecumseh's causes of actions fails to state a claim because
10 Debtor contributed money to purchase the disputed receivables, and/or or held an ownership
11 interest in the disputed receivables for a period of time prior to any transfer that allegedly
12 occurred.

13 M. One or more of Tecumseh's causes of actions fails to state a claim because
14 Tecumseh never actually accepted any of the alleged assignments and sale.

15 The Trustee reserves the right to assert additional affirmative defenses that are
16 deemed appropriate because of the discovery of new information.

17
18 **COUNTERCLAIM**
AGAINST TECUMSEH-INFINITY MEDICAL RECEIVABLES FUND, LP

19 Counter-Claimant Robert E. Atkinson, Chapter 7 Trustee, by and through counsel,
20 hereby asserts his counterclaim against Counter-Defendant Tecumseh-Infinity Medical
21 Receivables Fund, LP, and alleges:

22
23 **JURISDICTION AND VENUE**

- 24 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and
25 1334.
26 2. This is action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (C), and (K).
27 3. If this adversary proceeding is determined to be noncore, or if this adversary
28 proceeding is a core proceeding under 28 U.S.C. § 157(b) but may not, as a constitutional
matter, be adjudicated as such, the Trustee consents to the entry of final orders or judgments
by the bankruptcy judge.

15. Tecumseh has alleged that the assignment and sale was made pursuant to a Sub-Advisory Agreement, which is governed by South Carolina law.

16. For each of the Transferred Accounts Receivable, Debtor did not change or modify the medical lien at the law firm of the injured party.

17. For all of the Transferred Accounts Receivable, the medical lien remained in Debtor's name in the records of the law firm of the injured party.

18. For each of the Transferred Accounts Receivable, either Debtor or Tecumseh had the right to receive payment thereon ("Rights to Payment").

FIRST CAUSE OF ACTION

[AVOIDANCE OF UNPERFECTED LIEN]

[11 U.S.C. §§ 544, 551; NRS § 104¹]

19. The Trustee repeats and re-alleges the allegations set forth in paragraphs 1 through 18 above, and thereby incorporates the same as if set forth fully herein.

20. Nevada's implementation of Article 9 the Uniform Commercial Code is codified at NRS § 104.9101 *et seq.* ("Nevada UCC Article 9").

21. The Transferred Accounts Receivable and/or the Rights to Payment are 'accounts', as that term is defined in NRS § 104.9102(2), and other applicable law (as applicable, "Accounts").

22. Pursuant to NRS § 104.9109(1)(c), the Nevada UCC Article 9 governs the Debtor's assignment and sale of the Accounts.

23. Because Nevada UCC Article 9 applies to assignment and sale of accounts, the perfection requirements of Article 9 governs such transactions.

24. The Debtor was located solely in Nevada. Pursuant to NRS § 104.9301(1) and other applicable law, the laws of Nevada therefore govern perfection of an interest in the Accounts.

25. Pursuant to NRS § 104.9310(1) and other applicable law, Tecumseh was required to file a financing statement to perfect its interests in the Accounts.

¹ To any extent that Tecumseh proves that South Carolina is the applicable state law for the assignment and sale of the receivables, then the phrase "and other applicable law" found in this counterclaim shall include (but not be limited to) the corresponding statutes found in South Carolina's codification of the Uniform Commercial Code (S.C. Code Ann § 36-1-101 *et seq.*).

26. By not filing a financing statement with the Nevada Secretary of State (or in any other State) prior to the Petition Date, Tecumseh failed to perfect interests in the Accounts. Therefore, its interest in the Accounts was unperfected on the Petition Date.

27. Pursuant to NRS § 104.9317 and other applicable law, the unperfected interests of Tecumseh in the Accounts is subordinate to the rights of a judicial lien creditor.

28. Pursuant to 11 U.S.C. § 544(a)(1), the Trustee has the rights and powers of a judicial lien creditor.

29. Pursuant to the strong-arm powers of 11 U.S.C. § 544(a), the unperfected interests of Tecumseh in the Accounts is subordinate to the rights of the Trustee, and the Trustee can avoid the transfer of any of the Accounts to Tecumseh.

30. Under applicable State and Federal bankruptcy law, when an outright buyer of accounts receivable failed to perfect its interest in a debtor's accounts by filing a financing statement, the buyer cannot prevail over the bankruptcy trustee, as lien creditor. *See, e.g., Valley Bank of Nevada v. City of Henderson*, 528 F. Supp. 907 (D. Nev. 1981).

31. In addition, pursuant to 11 U.S.C. § 551, the Debtor may preserve this avoided transfer of the Accounts for the benefit of the estate.

WHEREFORE, the Trustee prays for judgment, in favor of the Trustee and against Tecumseh, as follows:

- Finding that the unperfected interests of Tecumseh in the Accounts is subordinate to the rights of the Trustee under 11 U.S.C. § 544;
- Avoiding the transfer of any of Debtor's property to Tecumseh that ever occurred, including but not limited to the Accounts; and
- Preserving this avoided transfer for the benefit of the estate, i.e., that the Accounts are property of the bankruptcy estate.

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DATED: January 6, 2022

ATKINSON LAW ASSOCIATES LTD.

By: /s/ Clarisse L. Crisostomo
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 Trustee